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UNCLAS CARACAS 003940

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STATE FOR WHA/AND
STATE FOR EB/MTA/MST
NSC FOR CBARTON
TREASURY FOR OASIA-GIANLUCA SIGNORELLI
USTR FOR G. BLUE
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E.O. 12958: N/A
TAGS: ECON EFIN ETRD VE
SUBJECT: VENEZUELA 2005 NATIONAL TRADE ESTIMATE REPORT SUBMISSION

REF: STATE 240980

¶1. (U) Summary: The Following is Embassy Caracas' submission for the 2005 National Trade Estimate Report. This document was also submitted as a MS Word document to G. Blue and B. Harmon at USTR by e-mail on December 23, 2004. End Summary

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TRADE SUMMARY

¶2. (U) The estimated U.S. trade deficit with Venezuela for 2004 is projected at $19.5 billion, an increase of $5.2 billion from the trade deficit of $14.3 billion in 2003. U.S. goods exports to Venezuela were approximately $4.5 billion, up $1.8 billion from 2003. U.S. imports from Venezuela are estimated at about $24 billion in 2004, an increase of $7 billion from the level of imports in 2003. The large increase in imports is related primarily to the increase the price of petroleum, which represents the vast majority of U.S. imports.

¶3. (U) The stock of U.S. foreign direct investment (FDI) in Venezuela in 2003 was $10.8 billion according to U.S. Department of Commerce statistics. U.S. FDI in Venezuela is concentrated largely in the petroleum, telecommunications, manufacturing and finance sectors.

IMPORT POLICIES

Tariffs

¶4. (U) Venezuela is part of the Andean Community. In 2002, the five member countries of the Andean Community (Venezuela, Peru, Ecuador, Colombia, and Bolivia) agreed to establish an Andean free trade zone, a common external tariff (CET), and a customs harmonization policy by January 2004. The CET agreement established a unified tariff schedule that would have come into effect at the end of 2003 (decision 535). In October 2002 the member Ministers of the Andean Community met and agreed upon tariff rates for 62 percent of import items. In April 2003 all the Andean members except Peru reached consensus on a CET for the remaining 38 percent.

¶5. (U) In December 2003, however, the members decided to postpone implementation of the CET, previously set for January 1, 2004, until May 10, 2004. In May members again decided to postpone the implementation of the CET, this time for a year until May 2005. The members have agreed to review the CET,s effect on individual tariffs with the intention of possibly modifying the rates. The CET has a four-tiered tariff structure of zero, five percent, ten percent and twenty percent.

¶6. (U) In December 2003 the Andean Community signed a free trade agreement with MERCOSUR, the Southern Cone Common Market. Key elements of the agreement such as the length of phase-in periods for tariff removal require further negotiation. In Mid-2004, Venezuela joined MERCOSUR as an associate member, which does not provide access to the tariff benefits of full membership. Venezuela was among the 12 South American countries that signed the "Cuzco Declaration" on December 8, 2004 announcing the formation of the South American Community of Nations which would ultimately unite and replace both the Andean Community and MERCOSUR. Work on the mechanics of the new entity is slated to begin in 2005.

¶7. (U) Venezuela has been using the tariffs established under the Andean Community,s price band system since 1995 for certain agricultural products, including feed grains, oilseeds, oilseed products, sugar, rice, wheat, milk, pork and poultry. Yellow corn was added to the price band system in 1996, and processed poultry was added in 2001. Ad valorem rates for these products are adjusted according to the

relationship between commodity market reference prices and established floor and ceiling prices. When the reference price for a particular commodity falls below the established floor price, the compensatory tariff for that commodity and related products is adjusted upward. Conversely, when the reference price exceeds the established ceiling, the compensatory tariff is eliminated. Floor and ceiling prices are set once a year based on average prices during the past five years. Venezuela publishes these prices each April.

¶8. (U) In addition to the traditionally high import tariffs of the Andean Community,s price band system, Venezuela also protects its agricultural producers through a non-legislated system of guaranteed minimum prices and the restrictive use of import licenses and permits. Management of tariff-rate quota commitments by the Government of Venezuela has been arbitrary and nontransparent and has negatively affected trade in basic agricultural commodities as well as processed products. The Venezuelan Government has denied import licenses for both in-quota and over-quota quantities, even though importers are willing to pay the over-quota tariff for additional quantities of products.

¶9. (U) U.S. agricultural exporters advise that the Venezuelan Government also routinely fails to open the quotas in a timely manner, and for some products, such as pork, has refused to "activate" the quota at all. Venezuela announced in 2001 that it would not grant import licenses for corn until all domestic white corn had been marketed, resulting in an effective import ban. Venezuela also has restricted the issuance of import licenses for sorghum, soybean meal, yellow grease, pork, poultry, oilseeds, and some dairy products. The government no longer publishes information and statistics on license requests or license issuance.

¶10. (U) Under the Andean Community,s Common Automotive Policy (CAP), assembled passenger vehicles constitute an exception to the 20 percent maximum tariff and are subject to 35 percent import duties.

Non-Tariff Measures

¶11. (U) In response to the rapid decline in the value of the national currency, the Bolivar, following a two-month general strike that brought oil production to a near standstill, the Central Bank of Venezuela halted trade in Bolivars on January 22, 2003. President Chavez announced the creation of an Exchange Administration Board (CADIVI) on February 5, 2003 to regulate the purchase and sale of foreign currency. During much of 2003, CADIVI was unable to process requests for authorization of foreign exchange in an efficient and timely manner and only supplied $3.6 billion or approximately two months worth of transactions. There has been significant improvement over time. The supply of foreign currency reached a level of approximately $15 billion in 2004, or 55 percent of approved authorizations. A number of goods have also been added to the list of imports eligible for foreign exchange including intangibles such as services and the repatriation of capital, which totaled $1.5 billion at the end of the third quarter. A new resolution allows importers to ship products without pre-approval by the government. There continue to be delays with pre-inspection companies thereby increasing storage costs. Although the number of currency certificate approvals has increased steeply, operating with a 50 percent backlog in liquidations puts significant constraints on imports which accounted for 68.5 percent of requests, followed by private foreign debt with 12.5 percent and foreign investments with 8.6 percent. Exchange control authorities have repeatedly said that the exchange control system will be eased but will remain a permanent long-term mechanism.

¶12. (U) Agricultural products have received the majority of dollars under the CADIVI system, since most basic food products are on the import list. Even so, the problems with coordinating the timing of access to dollars, approval of import permits and licenses, and contracting the shipments have led to numerous delays and cancelled shipments. Trade in higher value products, such as apples, pears, grapes, nectarines and other fruits and nuts, has been dramatically reduced as they are not included among the list of high priority products for which foreign exchange is available under the current currency control regime.

¶13. (U) Venezuela also requires that importers obtain sanitary and phytosanitary (SPS) permits from the Ministries of Health and Agriculture for most pharmaceutical and agricultural imports. The government increasingly has appeared to use this requirement to restrict agricultural and food imports without providing evidence of a scientific

basis, raising concerns about the consistency of these practices with World Trade Organization (WTO) requirements. The Venezuelan Government continues to issue SPS permits in an arbitrary manner without citing specific phytosanitary concerns. This restriction in particular affects trade in pork, poultry, beef, apples, grapes, pears, nuts, onions and potatoes.

¶14. (U) Though the GOV has not published requirements on absorption agreements, it has been common practice for years to require the purchase of domestic production before issuing import licenses or permits. Imports of yellow corn are dependent upon the purchase of local sorghum and/or white corn. Soybean imports are dependent upon the purchase of "locally produced" soybean meal, and permits for grape and black bean imports have been tied to the purchase of local product. The use of absorption requirements is extremely subjective, since Venezuela lacks a good statistical system to track levels of domestic crop production.

¶15. (U) This discretionary use of import licensing and permit procedures to curtail agricultural imports has become a major problem for the United States and other countries. Various countries have notified Venezuelan government officials that these and other licensing practices appear to violate their WTO commitments. In 2002, the United States Trade Representative initiated formal WTO consultations with Venezuela on its agricultural import license procedures for a wide-range of products. Canada, the EU, Chile, Argentina, and New Zealand participated in the first round of consultations and posed questions to the government of Venezuela.

¶16. (U) Venezuela prohibits the importation of used cars, used buses, used trucks, used tires and used clothing. No other quantitative import restrictions exist for industrial products. Some products such as cigarette paper, bank notes, weapons of war and certain explosives can only be imported by government agencies, (tax authorities calculate the cigarette tax on the volume of cigarette paper imported by the manufacturers). The government can delegate authority to import on its behalf, and can place orders for such products with the local sales agents of the foreign manufacturers.

¶17. (U) Venezuelan officials continue to discuss plans to improve customs procedures to better control the entry of illicit merchandise. The Venezuelan Commission on Antidumping and Safeguards has started investigations on the importation of steel and paper products as well as clothing and footwear. It appears that deficient customs procedures and the proliferation of contraband were contributing factors in those industries, calls for protection.

STANDARDS, TESTING, LABELING AND CERTIFICATION

¶18. (U) Some Venezuelan importers of U.S. products have alleged that the Venezuela applies product standards more strictly to imports than to domestic products. The certification process is expensive, increasing the cost of U.S. exports relative to domestic products. The Venezuelan Commission for Industrial Standards normally requires certification from independent laboratories located in Venezuela but at times accepts a certificate from established standards institutes abroad.

¶19. (U) In 2003 the Government of Venezuela passed Decree 2444, which requires importers of goods to Venezuela to obtain pre-shipment inspections of all imports. Four companies are certified to do these inspections: Bivac Venezuela (Veritas Group), SGS Trade Assurance Services, COTECNA, and Intertek Foreign Trade Standards.

¶20. (U) With regard to labeling, U.S. industries have raised concerns regarding Venezuela,s labeling regulation for clothing and footwear. The regulations as proposed by Venezuela,s Autonomous National Service for Standardization, Quality, Metrology and Technical Regulations (SENCAMER) were notified to the WTO Technical Barriers Trade Committee in July 2002 and the notice was published in the Official Gazette of Venezuela in August 2002. The regulations, which became effective in December 2002, establish the register of domestic manufacturers and importers of clothing and footwear and minimum labeling requirements for all clothing and footwear products marketed in Venezuela. Of primary concern to U.S. manufacturers is the requirement that labels must be customized to include detailed information about the importer of the goods.

GOVERNMENT PROCUREMENT

¶21. (U) Venezuela,s government procurement law covers purchases by government, national universities, and autonomous state and municipal institutions. The law requires a contracting agency to prepare a budget estimate for a given purchase based on reference prices maintained by the Ministry of Production and Commerce. This estimate is to be used in the bidding process. The law forbids discrimination against tenders based on whether they are national or international. However, the law also states that the President can mandate temporary changes in the bidding process "under exceptional circumstances" or in accordance with "economic development plans" to promote national development, or to offset adverse conditions for national tenders. These measures can include margins of domestic price preference; reservation of contracts for nationals; requirements for domestic content, technology transfer and/or the use of human resources; and other incentives to purchase from companies domiciled in Venezuela. For example, government decree 1892 establishes a 5 percent preference for bids from companies with over 20 percent local content. In addition, half of that 20 percent of content must be from small to medium sized domestic enterprises.

¶22. (U) In an effort to move away from proprietary software products, the Government of Venezuela in 2004 introduced a law mandating the use of open-source software in government and public institutions. This is expected to reduce the demand for U.S. software products somewhat, though much software currently in use is unlicensed or pirated.

¶23. (U) In the international arena, Venezuela has reinstituted state controlled purchases of basic food products for its new internal distribution system, Mercal, a network of state-owned stores aimed at low-income Venezuelans. The state-trading entity, CASA, has to date purchased sugar, rice, wheat flour, black beans, milk powder, edible oil, margarines, poultry and eggs from a variety of countries. The private sector has complained that CASA has an unfair advantage in that its access to dollars is assured, as is its access to import licenses and permits. Furthermore, CASA, as a government entity, brings in products without tariffs and customs duties.

¶24. (U) A new ministry has been created called the Ministry of Food. The new ministry is now responsible for a large number of activities formerly under the Ministries of Agriculture and Lands, Health and Social Development, and Production and Commerce. Among the duties taken away from the Ministry of Agriculture and Lands are the issuances of sanitary permits and import licenses. Price setting for all food and feed products has been moved from the Ministry of Production and Commerce into the Ministry of Food. In addition, the government is working to move food registration from the Ministry of Heath and Social Development into the new food ministry.

¶25. (U) Venezuela is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

¶26. (U) Exporters of selected agricultural products - coffee, cocoa, some fruits and certain seafood products - are eligible to receive a tax credit equal to 10 percent of the export,s value.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

¶27. (U) Venezuela is a member of the World Intellectual Property Organization (WIPO). It is also a signatory to the Berne Convention for the Protection of Literary and Artistic Works, the Geneva Phonograms Convention, the Universal Copyright Convention, and the Paris Convention for the Protection of Industrial Property. Through Andean Community Decision 486, Venezuela has ratified the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

¶28. (U) The Venezuelan Industrial Property Office (SAPI) leaves much room for improvement, and its actions and occasional publicly stated antagonism towards IPR often draw criticism from IPR advocates and rights holders. Protection of IPR is also hindered by the lack of adequate resources for the Venezuelan copyright and trademark enforcement police (COMANPI) and for the special IPR prosecutor,s office. Venezuela's tax agency SENIAT is promoting several measures to fight piracy in an effort to reduce tax evasion, including a new anti-piracy law and the introduction of a tax on street vendors. According to industry representatives, SENIAT seems to be a promising enforcement entity due to its better

technical and financial capabilities.

¶29. (U) Unfortunately, pirated software, music and movies remain readily available throughout the country. In the 2003 Annual Review, Venezuela remained on USTR's Special 301 Watch List.

Patents and Trademarks

¶30. (U) Venezuela provides the legal framework for patent and trademark protection through Andean Community Decision 486 and the 1955 National Industrial Property Law. Andean Community Decision 486 takes major steps towards bringing Venezuela into WTO TRIPS compliance. However, without corresponding local laws, Venezuela is not completely TRIPS compliant. Andean Community Decision 345 covers patent protection for plant varieties.

¶31. (U) U.S. companies remain concerned about the impact of the Andean Tribunal's 2002 interpretation of Articles 14 and 21 of Decision 486, which do not allow for the patenting of "second-use" products. Under pressure from the Andean Community and in line with some changes in leadership at SAPI, Venezuela has revoked previously issued patents. Very few patents were awarded in 2004. Since 2002, Venezuela's food and drug regulatory agency (INH) began approving the commercialization of new drugs, which were the bioequivalents of already patented drugs, thereby denying the patent-holding companies protection of their test data. In effect, the government now allows the test data of patented drugs or those for which patents have been requested, most of which required lengthy and expensive development, to be used by others seeking approval for their own unlicensed versions of the same products.

Copyrights

¶32. (U) Andean Pact Decision 351 and Venezuela's 1993 Copyright Law provide the legal framework for the protection of copyrights. The 1993 Copyright Law is modern and comprehensive and extends copyright protection to all creative works, including computer software. A National Copyright Office was established in October 1995 and given responsibility for registering copyrights, as well as for controlling, overseeing and ensuring compliance with the rights of authors and other copyright holders. Industry experts are concerned about a proposed new copyright law proposal, which would require the mandatory registry of works, reduce protection terms, hamper distribution agreements and increase royalties.

¶33. (U) The Venezuelan copyright and trademark enforcement branch of the police (COMANPI) continues to provide copyright enforcement support with a small staff of permanent investigators. A lack of personnel, coupled with a very limited budget and inadequate storage facilities for seized goods, has forced COMANPI to work with the National Guard and private industry to improve enforcement of copyrighted material. COMANPI can only act based on a complaint by a copyright holder; it cannot carry out an arrest or seizure on its own initiative, which leads to weaker enforcement.

SERVICES BARRIERS

¶34. (U) Venezuela maintains restrictions on a number of service sectors. Professions subject to national licensing legislation (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians and journalists) are reserved for those individuals who meet Venezuelan certification requirements. In addition, only Venezuelan nationals may be licensed as architects. Some (particularly government-related) accounting and auditing functions require Venezuelan citizenship, and only Venezuelan nationals may act as accountants for companies with public stock greater than 25 percent. Also, foreign professionals wishing to work in Venezuela must revalidate their credentials at a Venezuelan university on the condition of reciprocity. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed in the practice of Venezuelan law.

¶35. (U) Foreigners are required to establish a commercial presence for the provision of engineering services. Foreign consulting engineers must work through local firms or employ Venezuelan engineers. There is a law for public tenders, which gives preferential treatment to Venezuelan companies if they have the capability to carry out the work and if the project is financed by public funds. Foreign capital is restricted to a maximum of 19.9 percent in professional associations.

¶36. (U) Venezuela limits foreign equity participation (except from other Andean Community countries) to 20 percent in enterprises engaged in television and radio broadcasting, Spanish language newspapers, and professional services whose practice is regulated by national laws. Finally, in any enterprise with more than 10 workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

¶37. (U) The government enforces a "one-for-one" policy that requires foreign musical performers giving concerts in Venezuela to share stage time with national entertainers. There is also an annual quota regarding the distribution and exhibition of Venezuelan films. At least half of the television programming must be dedicated to national programs, and at least half of FM radio broadcasting must be dedicated to Venezuelan music.

Financial Services

¶38. (U) By signing the 1997 WTO Financial Services Agreement, Venezuela made certain commitments to provide market access for banking, securities, life and non-life insurance, reinsurance and brokerage activities. Venezuela did not make commitments on pensions, or on maritime, aviation and transportation insurance, and it reserved the right to apply an economic needs test as part of the licensing process. Only local insurers may insure imports that receive government-approved tariff reductions or government financing.

¶39. (U) New rules governing civil aviation, maritime activities and transportation insurance also have been issued in the package of 49 laws passed under enabling powers by President Chavez. Many of the laws still need implementing regulations. The impact of the legislation is, therefore, still unclear.

INVESTMENT BARRIERS

¶40. (U) The government continues to control key sectors of the economy, including oil, petrochemicals and much of the mining and aluminum industries. Venezuela began an ambitious program of privatization under the Caldera administration, but under President Chavez further privatization has been halted.

¶41. (U) Foreign investment continues to be restricted in the petroleum sector. The exploration, production, refining, transportation, storage, and foreign and domestic sale of hydrocarbons are reserved to the state. However, private companies may engage in hydrocarbons-related activities through operating contracts or through equity joint ventures with state owned PDVSA. The Venezuelan constitution reserves ownership of the state oil company (PDVSA) to the Venezuelan government. It does allow the sale of subsidiaries and affiliates of PDVSA to foreign investors. In the early 1990's, the Venezuelan government partially opened the sector to private investment in order to promote new petrochemical joint ventures and to bring inactive oil fields back into production. Almost 60 foreign companies, representing 14 different countries, participated in this process. PDVSA and foreign oil companies signed 33 operating contracts for marginal fields after three rounds of bidding.

¶42. (U) The Hydrocarbons Law of 2001 has raised concerns in the industry as it mandates a minimum 50 percent national participation in future projects and increases most royalties from 16.67 percent to 30 percent. No projects have yet been negotiated under this law. The Gaseous Hydrocarbons Law offers more liberal terms, and Venezuela's government has sought foreign investment to develop offshore natural gas deposits near the Orinoco delta. The Venezuelan Government recently unilaterally eliminated a royalty holiday ceded to joint venture projects devoted to the development of Venezuela's extra heavy crude. These projects created as strategic associations during the partial opening of the sector enjoyed 35 year contracts endorsed by the National Congress.

¶43. (U) The government passed legislation in 1998 aimed at introducing domestic and foreign competition into the domestic gasoline market. The law allows foreign and non-governmental Venezuelan investors to own and operate service stations, though the government retains the right to set product prices. Government controlled gasoline prices have not risen in several years and a number of currency devaluations and a high inflation rate have eliminated profit margins.

¶44. (U) Hydroelectric power generation in Venezuela is reserved to the state, although private sector participation

is permitted in transmission and distribution. In early 2000, the U.S. power generating company, AES Corporation, successfully took control, by means of a stock swap, of Electricidad de Caracas (EDC), the local electrical company that provides power to the Caracas metropolitan area.

¶45. (U) A range of other natural resources - including iron ore, coal, bauxite, gold, nickel and diamonds - is gradually being opened to greater private investment by means of strategic alliances. In 1996, CVG, the state-owned mining firm, announced its first joint venture with a foreign company to develop the Las Cristinas gold mine. President Chavez personally announced the beginning of operations in May 1999. Low gold prices, however, forced CVG and its partners to suspend the project. In 2001, the concession was revoked on grounds of the concessionaire's alleged inability to comply with the contract by not developing the reserves as stipulated, and the concession has been granted to another firm. In April 1999, the Venezuelan Government updated the 1945 Mining Law in order to encourage greater private sector participation in mineral extraction. However, in 2003 in line with a policy to centralize mining rights under the Ministry of Energy and Mines (MEM), the government ratified a 1996 decree requiring CVG to turn over to the Ministry the original files on concessions granted by CVG. In September 2003 the Ministry acted unilaterally to terminate some concession areas of a private diamond mining company in southern Venezuela alleging failure to comply with the terms of the concession.

¶46. (U) Under the Andean Community Common Automotive Policy, Venezuela, Colombia and Ecuador impose local content requirements as a condition for reduced duties on imports. The local content requirement for passenger vehicles was 32 percent in 1997. It was raised to 33 percent for 1998, and was then lowered to 24 percent for 2000. Under the WTO Agreement on Trade-Related Investment Measures (TRIMS Agreement), the three countries were obligated to eliminate local content requirements by the year 2000. However, in December 1999, the Andean Automotive Policy Council determined that it would not eliminate the local content requirement as it had initially indicated, but instead decided to increase it gradually to 34 percent by the year
¶2009. This automotive policy may be inconsistent with Venezuela's WTO obligations under the TRIMS Agreement.
Brownfield

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